

# FMLA and NY Paid Family Leave Law and Disability Benefits Law

It's time to answer some of the trickier questions about the interaction of the FMLA, the New York Paid Family Leave Law (PFL) and the state's Disability Benefits Law (DBL).

## Stacking or sequential?

Can an employee save their PFL time and take it after having already taken 12 weeks of FMLA?

It depends on the reason for the leave. The qualifying reasons for FMLA and PFL are like intersecting circles. Some reasons fall under both laws, but some leaves will be covered only by the FMLA, and some will be covered only by PFL.

### Example No. 1: 14 weeks off with FMLA leave to spare

Karen takes leave to care for a grandparent with a serious health condition beginning in January 2018 for eight weeks. This is a PFL qualifying reason, but not an FMLA qualifying reason because grandparents are covered family members under PFL, but not the FMLA. When Karen returns to work, she still has her full 12-week entitlement under FMLA.

In October 2018, Karen's daughter has surgery and she needs six weeks off. Although she has exhausted her PFL leave, she still has her entire FMLA bank of 12 weeks available because the January leave did not count against her FMLA entitlement.

Karen ends up taking 14 job-protected weeks off in 2018 and still has six weeks of FMLA time to spare.

### Example No. 2: Sometimes, FMLA and PFL overlap

Ed takes leave in February 2018 for bunion surgery and misses six weeks of work. This is an FMLA qualifying leave, but not PFL because the PFL does not cover an employee's own serious health condition.

In July 2018, Ed's father has a stroke. Ed requests 10 weeks off while his father undergoes rehabilitation. Ed only has six more weeks of FMLA leave. However, he still has eight weeks of PFL leave that he has not yet touched.

Here is where things get more complicated: Is Ed entitled to a total of 14 more weeks (6 FMLA + eight weeks of PFL)? No! The first six weeks would count as both FMLA and PFL. His father's serious health condition is covered under both laws. After six weeks, FMLA leave runs out, but Ed can take another two weeks under PFL. In the end, he is entitled to only eight more weeks—not the 10 he requested.

### Example No. 3: FMLA leave counts against PFL entitlement

Jeremy is a new father in 2018. Since the FMLA provides 12 weeks and PFL provides eight weeks of leave, he requests 20 weeks to bond with his baby.

That's too much, because the reason for the leave—bonding with a new child—qualifies under both laws. Jeremy's employer can require him to take the leaves concurrently, with the FMLA and PFL running at the same time, for a total of 12 weeks.

Jeremy can't take unpaid FMLA leave for the first 12 weeks and follow up with paid PFL. If leave qualifies under both laws and the employer designates the leave under FMLA, and the employee is notified that it is covered under both laws, the FMLA leave time will count against the employee's PFL entitlement even if the employee refuses to file a PFL claim.

## **Maternity leave confusion**

Maternity leave promises to be confusing to administer because of the intersection of the FMLA, PFL and the New York Disability Benefits Law.

Here is how it could play out in a typical pregnancy: The first six to eight weeks after childbirth is usually considered a period of disability, so the mother could use her DBL benefits without touching her PFL bonding benefit. Then, when she completes that six- to eight-week period, she could transition to PFL bonding leave and receive eight weeks of PFL leave.

Meanwhile, FMLA leave runs concurrently with both the DBL and then the PFL leave. However, the mother's leave entitlement does not end after the 12 weeks of FMLA leave expire because under state law, she is entitled to the full eight-week PFL benefit once she finishes her DBL benefit. The total job-protected time taken (assuming six weeks of DBL) is 14 weeks (6 + 8).

Can a mother choose to forego DBL and go straight to PFL? Yes, once the baby is born, but it will reduce the total number of weeks she can be out on job-protected leave. The mother could elect to start PFL bonding leave on the delivery date. The eight weeks of PFL would run concurrently with FMLA, and she would be entitled to a total of 12 weeks of leave.

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